

HOUSE BILL NO. 115

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE IMPOSITION OF AN ADDITIONAL SENTENCE FOR OFFENSES COMMITTED WITH A DANGEROUS WEAPON DOES NOT APPLY IF THE USE OF A WEAPON IS AN ELEMENT OF THE UNDERLYING OFFENSE; AND AMENDING SECTION 46-18-221, MCA."

WHEREAS, in State v. Guillaume, 1999 MT 29, 293 Mont. 224, 975 P.2d 312 (1999), the Montana Supreme Court held that as applied to offenses in which the use of a weapon is an element of the offense, the additional sentence for an offense committed with a dangerous weapon violates the double jeopardy provision of Article II, section 25, of the Montana Constitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-221, MCA, is amended to read:

"46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense, other than an offense in which the use of a weapon is an element of the offense, and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of ~~such~~ the underlying offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons ~~shall~~ must be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion

1 than the present offense, under 18 U.S.C. 924(c); and

2 (b) a person who has previously been convicted of an offense in this or another state, committed
3 on a different occasion than the present offense, during the commission of which ~~he~~ the person knowingly
4 displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other
5 dangerous weapon.

6 (3) The imposition or execution of the minimum sentences prescribed by this section may not be
7 deferred or suspended, except as provided in 46-18-222.

8 (4) An additional sentence prescribed by this section ~~shall~~ must run consecutively to the sentence
9 provided for the offense."

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